



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

May 20, 1993

Honorable Kenny Marchant
Chairman
Committee on Investments and Banking
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-41

Re: Whether a retired individual who is receiving retirement benefits from the Teacher Retirement System may be compensated as an elected member of a municipal governing body (ID# 19089)

Dear Representative Marchant:

You have requested our opinion as to whether a retired individual who is receiving retirement benefits from the Teacher Retirement System may be compensated as an elected member of a municipal governing body.

Article XVI, section 40, of the Texas Constitution, which, in general, prohibits a person from holding more than one office of emolument under various circumstances, contains the following provision:

State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

This language has been held to prohibit a public school teacher, who receives a portion of her compensation from "funds of the state," from simultaneously receiving compensation as a member of a city council. *See* Attorney General Opinions JM-1266 (1990); JM-118 (1983). It has been suggested that the proviso would also be applicable to a *retired* teacher who is receiving a monthly retirement check from the Teachers Retirement System. In order to reach this conclusion, the word "compensation" in article XVI, section 40, would have to be construed to include a monthly retirement stipend. In our opinion, such a construction is untenable.

Initially, we observe that we have been directed to no judicial or other authority which holds that a monthly retirement stipend constitutes "compensation" for purposes of dual office holding. The statutes governing the Teachers Retirement System describe the

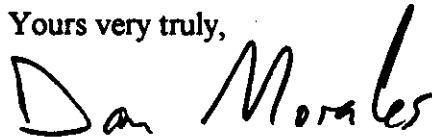
monthly payment as a "standard service retirement annuity," or a "disability retirement annuity." Gov't Code, ch. 824. Furthermore, the entire thrust of article XVI, section 40, is directed at the holding of more than one *office* or form of *employment* or combination of the two.

In addition, the proposed interpretation would produce ludicrous consequences, as the following example will demonstrate. By its terms, the proviso's quoted language does not apply to "state *officers*." The first sentence of article XVI, section 40, which bars an individual from simultaneously holding more than one office of emolument, would not prohibit a retired *governor*, for example, from serving as a compensated member of a city council while, at the same time, drawing state retirement benefits. Thus, the suggested construction would bar a retired teacher from receiving a salary for service on a city council, but it would *not* prohibit a retired governor from doing so. We cannot believe that the voters who adopted article XVI, section 40, intended such a dubious result. Accordingly, it is our opinion that the plain language of article XVI, section 40, fails to bar a retired individual who is receiving retirement benefits from the Teacher Retirement System from simultaneously receiving compensation as an elected member of a city council.

S U M M A R Y

Nothing in article XVI, section 40 acts to bar a retired individual who is receiving retirement benefits from the Teacher Retirement System from simultaneously receiving compensation as an elected member of a city council.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly stylized font.

Dan Morales
Attorney General